IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 155 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

PREMIER DIE CASTING & ENGG.CO.LTD.

Appearance:
MR MANISH R BHATT for Petitioner
SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.
Date of decision: 29/01/97

ORAL JUDGEMENT

(Per Rajesh Balia, J)

1. While framing assessment order for the year 1971-72 in respect of the assessee which is a limited company under Section 143(3) on 22.1.1974, the claim of the assessee on account of depreciation was stated thus:

Depreciation	Rs.83,555/-
Unabsorbed depreciation of assessment year 1969-70	Rs.44,696/-
Assessment year 1970-71	Rs.38,537/-
Total	1,66,788/-

2. After setting off it against the taxable income of the year it found that after set off still remains unabsorbed depreciation of Rs.56,309 which is to be

carried forward. However, later on the Income Tax Officer on perusing the assessment order 1969-70 dated

9.1.1970 found that the entire depreciation claim in the assessment year 1969-70 was allowed as deduction and no amount was left which was required to be carried forward as unabsorbed depreciation in assessment year 1969-70 amounting to Rs.44,696/-. He therefore, treating it to be mistake apparent on the face of the record issued notice under Section 154 of the Act for rectifying the mistake in assessment year 1971-72 and after hearing the assessee, the Income Tax Officer made an order on 5.11.1977 rectifying the assessment by withdrawing the aforesaid deduction sought on account of unabsorbed depreciation relating to assessment year 1969-70 and recomputed the unabsorbed depreciation development rebate etc. to be carried forward. The assessee's contention before the Income Tax Officer had been firstly that there is no mistake apparent on record which can be rectified and alternatively it was urged that if there is any mistake it was in the assessment order 1969-70 and therefore rectification if any could take place only of the assessment year 1969-70. Without rectifying the assessment order of 1969-70, it is not permissible to amend the assessment order of 1971-72 by rectification. The contention of the assessee failed before the Appellate Assistant Commissioner. The Tribunal while found that so far as the validity of the initiation of proceeding under Section 154 is concerned, there was a mistake apparent on the record in the original assessment order of Income Tax Officer but so far as the merit of the case are concerned it agreed with the assessee's alternative argument by holding that initial mistake actually occurred in the order for assessment year 1969-70 and if that mistake remains on record and not rectified by the revenue, the rectification of the consequential mistake during the assessment year 1971-72 will further complicate the issue involved. In that view of the matter it held that the I.T.O. could not be said to be justified in rectifying the mistake piecemeal and as such the order passed by the I.T.O. and confirmed by the A.A.O. was reversed.

3. In the aforesaid facts and circumstances, the Tribunal by its order dated 7.7.82 has submitted statement of the case and referred the following two question of law for the opinion of this Court at the instance of the Commissioner of Income Tax:

1. "Whether on the facts and in the circumstances of the case, having upheld

the validity of rectification proceedings under Section 154 of the Income Tax Act, 1961, the Appellate Tribunal was justified in law in holding that mistake actually occurred in the assessment order for the assessment year 1969-70 and if that mistake remained on the record and not rectified by the revenue, the rectification of the mistake during the assessment year 1971-72 cannot be rectified by the Income-tax Officer."

2. "When unabsorbed depreciation of Rs.44,696/- stated to be of assessment year 1969-70 had been set off against the income for the assessment year in 1971-72 wrongly, the Tribunal was right in law in not sustaining the rectification order under Section 154 of the Act withdrawing the relief."

4. Heard the learned counsel for the revenue. None appears for the respondent in spite of service.

5. In the facts and circumstances of the case, we are of the opinion that questions referred to us be answered in negative for revenue.

6. Once the Tribunal has come to the conclusion that there was a mistake apparent on record giving jurisdiction to the assessing officer to proceed further, further impediment in correcting the mistake would not arise. It is fundamental that mistake giving jurisdiction to initiate proceedings under Section 154 is mistake relevant to the order which is sought to be rectified. It would be incongruous to say that the ITO had jurisdiction to initiate proceedings in respect of assessment year 1971-72 because there was mistake apparent on record and at the same time to hold that the mistake could not be corrected in rectification proceedings because in the process of correction complications would arise. As a matter of fact in view of the Tribunals own finding that there existed a mistake apparent on the face of the record giving jurisdiction to I.T.O. for rectification of its order, the consequential correction could not have been rejected on the ground that this mistake ought to have been corrected in the earlier orders.

7. We are also of the opinion that the claim of set off in respect of unabsorbed depreciation is relatable to

assessee's own claim vis-a-vis the assessment year in question. The conclusion of the ITO that in fact the claim of unabsorbed depreciation is not surviving for the current year is a mistake referable to the computation of income for the current year. It was not the contention of any one at any stage that if the ITO had discovered during the original assessment proceedings this mistake he could not have passed the original assessment order by disallowing this claim without amending the earlier years orders. In the facts and circumstances of the case, it is apparent that for the assessment year 1969-70, entire depreciation claim had been allowed and there was no mistake in assessment of total income and assessment of tax liability for that year which required amending the assessment of that year for making any adjustments. In the circumstances once entire depreciation has been allowed there was an inadvertent appendage to assessment order of 1969-70 which cannot be considered to be a finding affecting and forming essential part of assessment order for 1969-70. Moreover as reading of such fact becomes part of subsequent assessment year for the purpose of assessment of that year until such unabsorbed depreciation is set off within the permissible period. Here there is no question about correctness of calculation of unabsorbed depreciation in previous assessment years. In that event different consideration may arise. The claim of Rs.44,496/- was not adjusted against the income of assessment year 1970-71 therefore the fact that this mistake about describing the unabsorbed depreciation inadvertently crept in the assessment order of 1970-71 also neither affected the merit nor final outcome of assessment order of 1969-70 or 1970-71 requiring any adjustment on account of that mistake. Only correction which was required to be made in the facts and circumstances of the present case was in the assessment order 1971-72 without militating in any manner against the consequential order made by the ITO in respect of assessment order 1969-70 and 1970-71. If the ITO could have disallowed the claim of unabsorbed depreciation for 1971-72 while making initially final assessment order which has been already allowed in full in the assessment year 1969-70, we find no reason to inhibit the power of rectifying the order for 1971-72 on the ground that without making consequential assessment in orders of 1969-70 and 1970-71 the rectification could not have been made.

Accordingly both the questions are answered in negative that is to say that in favour of the revenue and against the assessee. No order as to costs.

(devu)